





City of Loma Linda Official Report

Karen Gaio Hansberger, Mayor
Floyd Petersen, Mayor pro tempore
Robert Christman, Councilmember
Stan Brauer, Councilmember
Robert Ziprick, Councilmember

COUNCIL AGENDA: May 11, 2004

TO: City Council

VIA: Dennis R. Halloway, City Manager 

FROM: Deborah Woldruff, AICP,  Community Development Director

SUBJECT: OPPOSE SENATE BILL NO. 744 (SB744) – PROPOSED
LEGISLATION GIVES THE CALIFORNIA DEPARTMENT OF
HOUSING AND COMMUNITY DEVELOPMENT (HCD) THE
AUTHORITY TO OVERTURN LOCAL LAND USE
DECISIONS THROUGH AN APPEAL PROCESS

RECOMMENDATION

The recommendation is for the City Council to pro-actively support the League of California Cities position to oppose SB 744, adopts the Resolution opposing the Bill, approve the draft letter to Assemblyman Robert Dutton that expresses the City's concern and opposition to the Bill, and/or contact other State Legislators with letters and telephone calls.

BACKGROUND

On Monday, May 3, 2004, the City Clerk, Pamela Byrnes O'Camb received a request from the League of California Cities to actively support their position to oppose SB 744. The Bill cleared the Senate on January 26, 2004 and moved to the Assembly Rules Committee. Between now and June 25, 2004, Senator Dunn needs to move the Bill through the Policy Committee, Fiscal Committee, and Appropriations Committee if it is to move to the Assembly Floor.

ANALYSIS

Staff is opposed to SB 744 for the following reasons:

- The bill would give HCD the authority to overturn local land use decisions after hearing appeals from housing development applicants who were previously denied approval or granted approval with Conditions by the local jurisdiction.

Essentially, HCD would be empowered to overrule local decisions that it views as "not reasonable or consistent with local housing needs."

- The bill would significantly increase the leverage of developers over local communities, by authorizing a developer to attempt an “end-run” around any local conditions imposed on a housing development that has been approved at the local level.

If HCD found that the local conditions are “not reasonable,” the Department would be empowered to order the local government to modify or remove such conditions, and the developer and panel can enforce the decision in court.

- The bill is clearly an attempt to transfer local land use authority to the State, and places the interests of developers over the interests of communities and their elected representatives.

Under this legislation, even if local conditions are legally valid, they may still be overturned based on a political decision of HCD.

- Aside from the potential loss of local land use authority, this level of State oversight is unwarranted.

Developers who believe that a local government has unjustly treated their projects currently have recourse to the courts under the Anti-Nimby Law [Section 65589.5 of the Government Code].

It is interesting that SB 744 seeks to empower developers to overturn locally imposed conditions, but ignores the affects of recent State-imposed conditions such as prevailing wage requirements, which can increase the costs of affordable housing by over 20 percent. For the reasons stated, the League of California Cities and Loma Linda staff oppose SB 744.

ENVIRONMENTAL

The adoption of the Resolution and approval of the draft letter to Assemblyman Robert Dutton is not defined as a project by the California Environmental Quality Act (CEQA) and therefore, is not subject to CEQA requirements.

FINANCIAL IMPACT

The financial impacts of this bill cannot be fully calculated at this time; however, approval of the Bill potentially could result in additional attorneys fees and related court costs.

ATTACHMENTS

1. Resolution
2. Draft Letter of Opposition to Assemblyman Robert Dutton
3. SB 744 (Dunn) – Current version as amended

RESOLUTION

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
LOMA LINDA, OPPOSING SB 744 (DUNN)

WHEREAS, Senate Bill 744 gives the California Department of Housing and Community Development (HCD) and Developers the power to determine conditions for approval of local projects – even in cases where a local government has already approved a project in accordance with the law; and

WHEREAS, Senate Bill 744 empowers HCD to hear appeals from developers, whose project were approved with conditions or additional requirements, effectively encouraging them to attempt an “end-run” around any local conditions imposed on a housing development that has been approved at the local level; and

WHEREAS, Senate Bill 744 gives the Department discretion to decide that the conditions or requirements imposed by the local government render the provision of housing “infeasible” or “not reasonable or consistent with meeting local housing needs,” and to order the local agency to modify or remove any such condition or requirement and to issue any necessary permit or approval; and

WHEREAS, even in cases where conditions imposed by a local government are legally valid, they may still be overturned based upon a political decision by the Department under this legislation; and

WHEREAS, Senate Bill 744 also gives HCD and Developers the power to overturn legally valid local government decisions to deny a project if the Department considers the local agency decision unreasonable or inconsistent with meeting local housing needs; and

WHEREAS, Senate Bill 744 is duplicative and unnecessary because developers who believe that a local government has unjustly treated their projects already have recourse to the courts under Anti-Nimby Law [Section 65589.5 of the Government Code]; and

WHEREAS, Senate Bill 744 fails to recognize that recent state-imposed conditions such as prevailing wage requirements have a serious impact on housing cost and can increase the costs of affordable housing by over 20 percent; and

WHEREAS, the League of California Cities and other California cities are strongly opposed to Senate Bill 744;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Loma Linda opposes SB 744 (Dunn) regarding the preemption of local land use authority by the California Department of Housing and Community Development.

Resolution No.
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PASSED, APPROVED AND ADOPTED this 11th day of May 2004 by the following
vote:

Ayes:
Noes:
Absent:
Abstain:

Karen Gaio Hansberger, Mayor

ATTEST:

Pamela Byrnes-O'Camb, City Clerk

ATTACHMENT 2

**DRAFT LETTER OF OPPOSITION TO
ASSEMBLYMAN ROBERT DUTTON**

May 11, 2004

Assemblyman Robert Dutton
63rd State Assembly District
State Capitol, Room 347
Sacramento, California 95814

RE: SENATE BILL (SB) 744 (DUNN) – NOTICE OF OPPOSITION

Dear Assemblyman Dutton:

The City of Loma Linda opposes SB 744 (Dunn), because the bill gives the California Department of Housing and Community Development (HCD) the authority to overturn local land use decisions after hearing appeals from housing development applicants who were previously denied approval or granted approval with conditions by a local agency. HCD is empowered to overrule local decisions that it views as “not reasonable or consistent with local housing needs.”

This measure significantly increases the leverage of developers over local communities, by authorizing a developer to attempt an “end-run” around any local conditions imposed on a housing development that has been approved at the local level. A developer could seek to overturn any local conditions, if the Department decides that the local conditions are “*not reasonable*.” The Department is empowered to “*order*” the local agency to modify or remove any such condition, and the developer can enforce this decision in court.

This measure is a clear transfer of local land use authority to the state, and places the interests of developers over the interests of the communities and their elected representatives. Under this legislation, even if the conditions imposed by a local government are legally valid, they may still be overturned based upon a political decision by the Department.

Besides the loss of local authority, this level of state oversight is unwarranted. Developers who believe that a local government has unjustly treated their projects currently have recourse to the courts under the Anti-Nimby Law [Section 65589.5 of the Government Code].

We also observe that SB 744 seeks to empower developers to overturn locally imposed conditions, but ignores the affects of recent state-imposed conditions such as prevailing wage requirements, which can increase the costs of affordable housing by over 20 percent.

For the above stated reasons, we strongly oppose SB 744.

Sincerely,

Dr. Karen Gaio Hansberger,
Mayor

cc: Assemblyman Alan Lowenthal, Chair, Assembly Housing and Community Development
Committee
Assemblyman Simon Salinas, Chair, Assembly Local Government Committee
Senator James Brulte, 31st State Senate District
Dan Carrigg, Legislative Representative, League of California Cities
Loma Linda City Council
Dennis R. Halloway, City Manager
Richard Holdaway, City Attorney
Pamela Byrnes-O'Camb, City Clerk

SB 744 (DUNN)
CURRENT VERSION AS AMENDED

AMENDED IN SENATE JUNE 3, 2003
AMENDED IN SENATE APRIL 21, 2003

SENATE BILL

No. 744

Introduced by Senators Dunn and Ducheny
(Principal coauthor: Senator Hollingsworth)
(Principal coauthor: Assembly Member Steinberg)
(Coauthors: Senators Burton and Florez)

February 21, 2003

An act to add Section 65585.4 to the Government Code, relating to planning.

LEGISLATIVE COUNSEL'S DIGEST

SB 744, as amended, Dunn. Planning: housing.

Existing law requires each city, county, or city and county to prepare and adopt a general plan for its jurisdiction that contains certain mandatory elements, including a housing element. One part of the housing element is an assessment of housing needs and inventory of resources and constraints relevant to meeting these needs. The assessment includes the locality's share of regional housing needs which is determined by the appropriate council of governments, subject to revision by the Department of Housing and Community Development.

This bill would ~~establish within~~ *require* the department ~~a Housing Accountability Committee consisting of 5 members, appointed as specified,~~ to hear appeals of city, county, or city and county decisions on applications for the construction of housing developments that meet specified affordability requirements.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 65585.4 is added to the Government
2 Code, to read:
3 65585.4. ~~(a) There shall be within the department a Housing~~
4 ~~Accountability Committee consisting of five members. The~~
5 ~~director of the department and the Director of the Governor's~~
6 ~~Office of Planning and Research shall be ex officio members,~~
7 ~~except that either may designate an employee of his or her~~
8 ~~respective department or office to serve on the committee. The~~
9 ~~remaining three members shall be appointed by the Governor with~~
10 ~~the advice and consent of the Senate. One member shall be a~~
11 ~~member of a city council or board of supervisors, and one other~~
12 ~~member shall have extensive experience in the development of~~
13 ~~affordable housing. The appointed members shall serve for terms~~
14 ~~of two years each, and the director shall designate the chairperson.~~
15 ~~A member of the committee shall receive no compensation for his~~
16 ~~or her services, but shall be reimbursed by the department for all~~
17 ~~reasonable expenses actually or necessarily incurred in the~~
18 ~~performance of his or her official duties. The committee shall hear~~
19 65585.4. (a) *The department shall hear* appeals pursuant to
20 ~~this section at least quarterly or more often as necessary. The~~
21 ~~committee. The department shall conduct the hearings in~~
22 ~~accordance with rules and regulations established by the~~
23 ~~department. The department shall provide the space and clerical~~
24 ~~and other assistance that the committee may require. department.~~
25 (b) Any applicant who proposes to construct a housing
26 development that meets the criteria of subdivision (c) and whose
27 application is either denied or approved with conditions that in his
28 or her judgment render the provision of housing infeasible, may
29 appeal the decision of the city, county, or city and county to the
30 ~~Housing Accountability Committee department.~~ However,
31 conditions or mitigation measures impose pursuant to a local
32 coastal permit or an environmental review required by the
33 California Environmental Quality Act (Division 13 (commencing
34 with Section 21000) of the Public Resources Code) may not be
35 appealed.

(c) An applicant may file an appeal with the ~~committee~~ department if both of the following criteria are met:

(1) The proposed housing development will meet any of the following affordability requirements:

(A) Five percent of the total housing of the housing development is available at affordable housing cost to extremely low income households whose household income is less than or equal to 30 percent of the area median income.

(B) Ten percent of the total housing of the development is available at affordable housing cost to very low income households, as defined in Section 50105 of the Health and Safety Code.

(C) Twenty percent of the total housing of the development is available at affordable housing cost to lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(D) Fifty percent of the total housing of the development is available at affordable housing cost to moderate-income households, consistent with Section 50052.5 of the Health and Safety Code.

(2) Either of the following criteria is met as of the date on which the application to the city, county, or city and county is deemed complete:

(A) The city, county, or city and county has adopted a housing element that the department has determined pursuant to Section 65585 to be in substantial compliance with the requirements of this article, and the proposed housing development, exclusive of any density bonus granted pursuant to Section 65915, is consistent with both the density allowed by the jurisdiction's zoning ordinance and the general plan land use designation as specified in any element of the general plan as of the date the application was deemed complete, provided that consistency shall not be required with the zoning ordinance or land use designation if the jurisdiction has not amended the ordinance or the designation to conform to the adopted housing element.

(B) The city, county, or city and county has not adopted a housing element that the department has determined pursuant to Section 65585 to be in substantial compliance with the requirements of this article, and the proposed housing development, is located on a site that is designated for residential

1 or commercial uses in any element of the general plan as of the date
2 the application was deemed complete.

3 (d) An applicant may file an appeal with the ~~committee~~
4 ~~department~~ within 20 days after the date of the decision by the
5 local agency to deny the application or approve the application
6 with conditions that render the provision of housing infeasible.
7 The ~~committee-department~~ shall notify the local agency of the
8 filing of such an appeal within 10 days, and the local agency shall,
9 within 10 days of the receipt of the notice, transmit a copy of its
10 decision and the reasons therefor to the ~~committee-department~~.
11 The appeal shall be heard within 30 days after receipt of the request
12 for an appeal by the applicant. The ~~appeal hearing may be~~
13 ~~conducted by the board, a subcommittee of one or more members~~
14 ~~of the board, or a hearing officer appointed by the chair of the~~
15 ~~board~~ *appeal hearing may be conducted by the department or a*
16 *hearing officer appointed by the director of the department. A*
17 *stenographic record of the proceedings shall be kept. At its next*
18 *full meeting, the committee* *Within 30 days of the appeals hearing,*
19 *the department* shall render a written decision, based upon a
20 majority vote, stating its findings of fact, its conclusions and the
21 reasons therefor. The hearing by the ~~Housing Accountability~~
22 ~~Committee-department~~ shall be limited to the issue of whether, in
23 the case of the denial of an application, the decision of the city,
24 county, or city and county was reasonable and consistent with
25 meeting local housing needs as determined pursuant to Section
26 65584 and, in the case of an approval of an application with
27 conditions and requirements imposed, whether those conditions
28 and requirements render the provision of housing infeasible and
29 whether they are reasonable and consistent with meeting local
30 housing needs as determined pursuant to Section 65584. If the
31 ~~committee-department~~ finds, in the case of a denial, that the
32 decision of the local agency is not reasonable or consistent with
33 meeting local housing needs, it shall vacate the decision and shall
34 direct the local agency to issue any necessary approval or permit
35 to the applicant. If the ~~committee-department~~ finds, in the case of
36 an approval with conditions and requirements imposed, that the
37 decision of the board renders the provision of housing infeasible
38 and is not reasonable or consistent with meeting local housing
39 needs, it shall order the local agency to modify or remove any such
40 condition or requirement so as to make the project no longer

1 infeasible and to issue any necessary permit or approval. Decisions
2 or conditions and requirements imposed by a local agency that are
3 consistent with meeting local housing needs shall not be vacated,
4 modified, or removed by the ~~committee~~—*department*
5 notwithstanding that those decisions or conditions and
6 requirements have the effect of rendering the provision of housing
7 infeasible.

8 (e) In any appeal before the ~~committee~~—*department*, the
9 applicant shall have the initial burden of proof to show that it has
10 met the requirements of subdivision (c). In a case of approval with
11 conditions or requirements imposed, the applicant shall also have
12 the burden of proof to show that the conditions and requirements
13 render the provision of housing infeasible. If the applicant meets
14 the initial burden of proof, then the city, county, or city and county
15 shall have the burden of proof to show that its action was
16 reasonable in that denial of the project or the failure to implement
17 the conditions and requirements, as proposed, would have a
18 specific, adverse impact, as defined in Section 65589.5, upon the
19 public health or safety, the physical environment, or on any real
20 property that is listed in the California Register of Historical
21 Resources, that there is no feasible method to satisfactorily
22 mitigate or avoid the specific adverse impact without rendering the
23 project infeasible, and that the mitigation or avoidance of such
24 impacts outweigh local housing needs.

25 (f) The ~~Housing Accountability Committee~~—*department* or the
26 applicant shall have the power to enforce the orders of the
27 ~~committee~~—*department* at law or in equity in the superior court.
28 The city, county, or city and county shall carry out the order of the
29 ~~Housing Accountability Committee~~—*department* within 30 days of
30 its entry and, upon failure to do so, the order of the ~~committee~~
31 *department* shall for all purposes, be deemed to be the action of the
32 local agency, unless the applicant consents to a different decision
33 or order by the local agency.

34 (g) The department may charge a fee to cover actual costs
35 directly related to the activities of the ~~Housing Accountability~~
36 ~~Committee~~—*department* in administering this section. The fee shall
37 initially be paid by the applicant. If the ~~committee~~—*department*
38 orders approval of the proposed development or modifies or
39 removes any conditions or requirements imposed upon the

- 1 applicant, the city, county, or city and county shall reimburse the
2 applicant for the fee paid pursuant to this subdivision.
- 3 (h) (1) For the purposes of this section, “housing
4 development” means a development project consisting of one or
5 more residential dwelling units or an emergency shelter facility.
- 6 (2) For the purposes of this section, an adopted housing
7 element that has been self-certified pursuant to Section 65585.1
8 shall be deemed to have been approved by the department, unless
9 a court finds that the jurisdiction’s housing element does not
10 substantially comply with this article.
- 11 (i) The remedies provided in this section are in addition to any
12 other remedy provided by law.

